

ORDERED.

Dated: August 14, 2020



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

Chapter 13

Christopher David Deese,

Case No. 8:20-bk-02499 -CPM

Debtor.

ORDER ON DEBTOR'S OBJECTION TO CLAIM

THIS CASE came on for consideration of the Debtor's Objection (the "Objection") (Doc. No. 6) to Proof of Claim No. 1 (the "Proof of Claim") filed by Badcock Corporation ("Badcock"). The Proof of Claim asserts a fully secured claim of \$5,116.53. Attached to the Proof of Claim are two invoices for the sale of certain household furnishings (the "Furniture"), which invoices total \$4,643.07 (\$4,152.50 for merchandise and \$495.57 for taxes and delivery charges). The Objection asserts that although the Proof of Claim identifies the claim as fully secured, there is "no proof of perfection of any alleged security interest." In addition, the Objection contends that the Proof of Claim includes insufficient documentation because it (i) fails to provide an accounting of payments

received by the Debtor and (ii) states a total (and secured) claim amount that exceeds the total amount reflected in the attached invoices, with no accounting for the difference.

Having reviewed the Objection and the Proof of Claim, the Court finds that the Objection should be sustained as to this last contention because the Proof of Claim fails to account for the difference between the total claim amount of \$5,116.53 shown on the face of the Proof of Claim and the total amount owed of \$4,643.07 shown on the invoices attached thereto.

However, the Court finds that the Objection should be overruled as to Badcock's failure to account for payments received by the Debtor. The Proof of Claim, which is on Official Form 410, expressly states on page 3 that "the creditor gave the debtor credit for any payments received toward the debt." The Proof of Claim need not include an accounting of such payments.¹ If, however, the Debtor seeks to object to the Proof of Claim because he disagrees that all payments have been credited, the Debtor may file a supplemental objection that states the specific amount and date of payment(s) made by him and requests that the total claim amount be reduced accordingly.

The Court also finds that the Objection should be overruled as to the assertion that the Proof of Claim fails to include proof of a "security interest." The contract attached to the Proof of Claim states at paragraph 8:

You hereby grant a purchase money security interest in each item of property purchased on the Account (unless a security interest is not permitted by law), except for any property that, when installed, will become a fixture. . . . You agree that the security interest will give both us and you all the rights and remedies granted by the Uniform Commercial Code as it applies from time to time in the State of Florida.

¹ Disclosure of payments received is required for a claim secured by a security interest in the debtor's principal residence. *See* Official Form 410A. Because Badcock asserts a security interest in personal property, such disclosure is not required.

Thus, I find that the claim amount set forth in the Proof of Claim, or at least a portion thereof (see discussion below), is properly identified as “secured.”²

Although not raised in the Objection, the Court notes Badcock asserts a secured claim in an amount that likely exceeds the value of Badcock’s collateral. As noted above, the invoices attached to the Proof of Claim reflect a total purchase price (not including taxes and delivery charges) of \$4,152.50, while the Proof of Claim states a fully secured claim of \$5,116.53. Under 11 U.S.C. § 506(a), the claim of a creditor holding a security interest may be allowed as a secured claim only to the extent of the value of the creditor’s collateral. With respect to personal property of an individual debtor in a case under chapter 7 or 13, the value for such collateral “shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing.”³ For property acquired for personal, family, or household purposes, replacement value for purposes of § 506(a) means “the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.”⁴ Here, if the Furniture was purchased new by the Debtor for \$4,152.50, it seems highly improbable that the value of the Furniture as of the petition date could be \$5,116.53.⁵

Accordingly, it is

² See § 679.1031, Fla. Stat. (governing purchase-money security interests).

³ 11 U.S.C. § 506(a)(2).

⁴ *Id.*

⁵ N.B.: Official Form 410 states that the person completing the form must sign and date it, and the form makes reference to Rule 9011(b), Fed. R. Bankr. P., pursuant to which any person submitting a paper to court, by signing the paper, certifies that “to the best of that person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, — . . . (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery” As well, the Proof of Claim affirmatively “declare[s] under *penalty of perjury* that the [information in the Proof of Claim] is true and correct.” (Emphasis added.)

ORDERED:

1. The Objection (Doc. No. 6) is sustained in part and overruled in part as stated below.
2. The Objection is sustained as to the failure to include an itemized accounting for the full claim amount of \$5,116.53.
3. The Objection is overruled with respect to the Debtor's contentions that the Proof of Claim fails to include an accounting of payments made by the Debtor and fails to provide proof that Badcock has a security interest in the Furniture.
4. Badcock shall have 30 days from the date of entry of this order to file an amended Proof of Claim that includes sufficient documentation to support the full amount of its claim and which, if appropriate, bifurcates its claim into secured and unsecured portions depending on the Furniture's replacement value as of the petition date.

Attorney Mark Martella is directed to serve a copy of this order on interested parties and file a proof of services within 3 days of entry of this order.